

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.50.501 through 17.50.503, 17.50.508,) )  
17.50.509, and 17.50.513; the adoption )  
of New Rules I through XXVI; and the )  
repeal of ARM 17.50.505, 17.50.506, )  
17.50.510, 17.50.511, 17.50.526, )  
17.50.530, 17.50.531, 17.50.542, )  
17.50.701, 17.50.702, 17.50.705 through) )  
17.50.710, 17.50.715, 17.50.716, and )  
17.50.720 through 17.50.726 pertaining )  
to the licensing and operation of solid )  
waste landfill facilities )

AMENDED NOTICE OF PUBLIC  
HEARING AND EXTENSION OF  
COMMENT PERIOD ON  
PROPOSED AMENDMENT,  
ADOPTION, AND REPEAL

(SOLID WASTE)

TO: All Concerned Persons

1. On April 24, 2008, the Department of Environmental Quality published MAR Notice No. 17-269 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 688, 2008 Montana Administrative Register, issue number 8. The department is publishing this amended notice to extend the public comment period, provide notice of a second hearing, add language to New Rule XVII, and propose adoption of a new rule pertaining to a saving clause.

2. Another public hearing will be held on July 9, 2008, at 9:00 a.m. in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules, with the proposed additional language in New Rule XVII shown below, and the proposed adoption of NEW RULE XXVI. In addition, the comment period for MAR Notice No. 17-269 and this amended notice is extended to July 23, 2008.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., June 30, 2008, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson, Paralegal, at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

4. The department is proposing to add the underlined language to New Rule XVII.

NEW RULE XVII ADOPTION OF FEDERAL LANDFILL GROUND WATER  
MONITORING AND CORRECTIVE ACTION (1) Except as provided otherwise in  
[NEW RULE XIX], the department adopts and incorporates by reference 40 CFR

Part 258, subpart E, and Appendices I and II to 40 CFR Part 258 pertaining to ground water monitoring and corrective action.

(2) through (4) remain as proposed in the original notice of public hearing.

REASON: The department is proposing to amend New Rule XVII(1) by adopting by reference 40 CFR Part 258 Appendices I and II. These appendices contain lists of contaminants for which ground water detection and assessment monitoring must be done and for which standards must be adopted. Monitoring of the contaminants and exceedances of the standards are then used to determine whether and what forms of corrective action will be required.

These appendices are referred to in numerous federal regulations being adopted by reference in New Subchapter IV, and in New Rule XIX(6). The department believes that it is necessary to adopt them by reference to make clear to the regulated community 1) which contaminants must be monitored for and 2) what the standards for those contaminants are that, when exceeded, will trigger requirements for further analysis and action.

5. The new rule provides as follows, stricken matter interlined, new matter underlined:

NEW RULE XXVI SAVING CLAUSE (1) The repeal of ARM 17.50.505, 17.50.506, 17.50.510, 17.50.511, 17.50.526, 17.50.530, 17.50.531, 17.50.542, 17.50.701, 17.50.702, 17.50.705 through 17.50.710, 17.50.715, 17.50.716, and 17.50.720 through 17.50.726 does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this rule].

AUTH: 75-10-204, MCA

IMP: 75-10-204, MCA

REASON: The department is proposing to adopt New Rule XXVI because it believes that, when it repeals a rule, the repealed rule still applies to actions that occurred while the rule was in effect. So, if a violation of a now-repealed rule had occurred while the rule was in effect, that violation could be the subject of an enforcement action after the rule was repealed.

Proposed New Rule XXVI would make this explicit.

This rule is necessary because it is desirable to have continuous coverage of rules, and enforcement against violations of rules should not be barred because the rule was repealed. If enforcement were barred, an incentive to comply with existing rules would be removed and the environmental degradation that the rules are designed to prevent might occur.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), and must be

received no later than 5:00 p.m., July 23, 2008. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Legal Unit, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Richard H. Oppen  
RICHARD H. OPPER  
Director

Reviewed by:

John F. North  
John F. North, Rule Reviewer

Certified to the Secretary of State, May 12, 2008.